



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket No USCG-2019-0340]**

**RIN 1625-AA08**

### **Special Local Regulation; Rock the River Toledo, Maumee River, Toledo, OH**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for a portion of the navigable waters of the Maumee River, Toledo, OH. This regulated area is necessary to protect spectators and vessels from potential hazards associated with high speed regatta races during Rock the River Toledo. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port Detroit, or a designated representative.

**DATES:** This temporary final rule is effective from 8 a.m. on June 28, 2019 through 7 p.m. on June 29, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0340 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Ryan Erpelding, Waterways Department, Marine Safety

Unit Toledo, Coast Guard; telephone (419)418-6037, or e-mail

Ryan.G.Erpelding@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this regatta in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Waiting for a 30-day effective period to run is impracticable and contrary to the public interest for the reasons discussed in the preceding paragraph.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Detroit (COTP) has determined that potential hazard associated with the regatta from 8 a.m. on June 28, 2019 through 7 p.m. on June 29, 2019 will be a safety concern to anyone within waters of the Maumee River, Toledo, OH where the regatta is being held. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the regatta occurs.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 8 a.m. on June 28, 2019 through 7 p.m. on June 29, 2019. The safety zone will encompass all U.S. navigable waters of the Maumee River, Toledo, OH from the Martin Luther King Jr. Memorial Bridge at river mile 4.30 to a line drawn from a point at 41°38'44.6"N 83°31'51.8"W east to a point at 41°38'45.1"N 83°32'02.2"W. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will patrol the regatta area under the direction of the Captain of the Port Detroit (COTP), or a designated representative. A designated representative may be a Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the COTP or a designated representative and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the COTP or a designated representative. The rules contained in the

above two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. Commercial vessels will have right-of-way over event participants and event safety craft. The races will stop for oncoming freighter or commercial traffic and will resume after the vessel has completed its passage through the regulated area. The COTP or a designated representative may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the COTP or a designated representative shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the COTP or a designated representative. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The COTP or a designated representative may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The COTP or a designated representative may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the COTP. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on VHF-FM Marine Channel 16 by the call sign "Coast Guard Patrol Commander."

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulated area. Vessel traffic will be able to safely transit around this regulated area, which will impact a small designated area of the Maumee River in Toledo, OH for a period of 35 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM Marine Channel 16 about the regulated area and the rule allows vessels to seek permission to enter the regulated area.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Under

the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this temporary rule on small entities. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of

actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation interval lasting for a period of 35 hours that will prohibit entry within specified waters of the Maumee River, Toledo, OH. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.



## **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T999-0340 to read as follows:

#### **§ 100.T999-0340 Special Local Regulation; Rock the River Toledo, Maumee River, Toledo, OH.**

(a) Regulated area. The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH from the Martin Luther King Jr. Memorial Bridge at river mile 4.30 to a line drawn from a point at 41°38'44.6"N 83°31'51.8"W east to a point at 41°38'45.1"N 83°32'02.2"W (NAD 83).

(b) Enforcement period. The regulated area described in paragraph (a) of this section will be enforced from 8 a.m. through 7 p.m. on June 28, 2019 and June 29, 2019.

(c) Special local regulations. (1) The Coast Guard will patrol the regatta area under the direction of the Captain of the Port Detroit (COTP), or a designated representative. A designated representative may be a Coast Guard Patrol Commander.

(2) Vessels desiring to transit the regulated area may do so only with prior approval of the COTP or a designated representative and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a

manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the COTP or a designated representative. The rules contained in the preceding two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. Commercial vessels will have right-of-way over event participants and event safety craft. The races will stop for oncoming freighter or commercial traffic and will resume after the vessel has completed its passage through the regulated area. COTP or a designated representative may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the COTP or a designated representative shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the COTP or a designated representative. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The COTP or a designated representative may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The COTP or a designated representative may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(3) Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the COTP. The Patrol Commander will be

aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on VHF-FM Marine Channel 16 by the call sign "Coast Guard Patrol Commander."

Dated: June 4, 2019.

Jeffrey W. Novak,  
Captain, U. S. Coast Guard,  
Captain of the Port Detroit.  
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